



U.S. Department of Justice

*United States Attorney
Eastern District of New York*

MEC:mec
F. #2013R00281

*271 Cadman Plaza East
Brooklyn, New York 11201*

September 11, 2015

By ECF

The Honorable Nicholas Garaufis
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: United States v. Kenneth Nowling
Criminal Docket No. 13-0182(NGG)

Dear Judge Garaufis:

This matter is scheduled for sentencing on September 16, 2015. The government herein supplements its September 8, 2015 sentencing letter to the Court.

The government confirms that, in furtherance of his cooperation in this investigation, the defendant made consensual recordings of his two co-conspirators.

In addition, the Presentence Investigation Report ("PSR"), at paragraph 89, incorrectly assessed restitution in the amount of the gratuities ("kickbacks") paid by the defendant to one of his co-conspirators. The restitution statute, 18 U.S.C. § 3663A, limits restitution to the full amount of each victim's loss. While the defendant's ill-gotten gains was correctly used to calculate the defendant's offense level under the Sentencing Guidelines, PSR at ¶ 32, there is no provision in the restitution statute that allows for the defendant's gains to be substituted for the victim's loss for purposes of calculating restitution. See United States v. Zangari, 677 F.3d 86, 91-94 (2d Cir. 2012).

Here, the Army National Guard ("ARNG") was the victim of the defendant and his co-conspirators' corrupt scheme to influence the awarding of ARNG's marketing and promotional contracts to the defendant's companies. One of the co-conspirators was a military officer in the ARNG, who used his substantial influence to steer the ARNG

contracts to the defendant's companies. The defendant paid unlawful gratuities, in the form of a percentage of the value of the contracts, to the brother of the military official. The gratuities totaled \$473,375. The defendant, however, performed on those contracts that were awarded to him by the ARNG. Therefore, even though the contracts were awarded through a corrupt process, the ARNG did not sustain a loss as a result of non-performance on those contracts.

Respectfully submitted,

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cc. Gary Schoer, Esq.
Angelica Deniz, USPO